

DITCHES NOT PRIVATE

Man Can Run Water Through Another Man's Property.

VERY IMPORTANT DECISION

Lower Court Upheld by the Supreme Court.

Importance of Irrigation and the Peculiarities of Water Laws Pointed Out.

An opinion handed down in the Supreme court yesterday in the case of E. J. Nash vs. Lee Clark et al., appellants, affirms the decision of the trial court. The action is one wherein the plaintiff sought to condemn a right-of-way in a ditch owned by the defendants. The complaint alleged that the plaintiff was the owner of eighty acres of land situated in Utah county, which land without irrigation is arid, barren and unproductive, but with irrigation would produce in abundance; that the defendants own a tract of land north of the plaintiff's and that they bring water in a ditch from Fort Canyon creek to their premises. The plaintiff claimed to own water in Fort Canyon creek and that the only practicable way in which to get it to his land was through defendant's ditch. The plaintiff asked that he be permitted to enlarge the ditch and have a perpetual right-of-way through the same, saying the land would be put to a public use.

The court entered judgment and decree in favor of the plaintiff, whereupon the defendants appealed to the Supreme court, on the ground that the use sought to be made of the property sought to be condemned is strictly private, and in no sense a public use.

THE QUESTION AT ISSUE.

The opinion holds that the only question presented by the appeal is: "Was the condemnation of appellants' land in this case, in law and in fact, for a public use?" The opinion then goes on to say: "There is no fixed rule of law by which this question can be determined. In other words, what is a public use cannot always be determined by the application of purely legal principles. This is evident from the fact that there are two lines of authorities, neither of which attempts to lay down any fixed rule as a guide to be followed in all cases. One class of authorities, in a general way, hold that by public use is meant a use by the public, or its agencies, that is, the public must have the right to the actual use in some way of the property appropriated; whereas the other line of decisions hold that it is a public use within the meaning of the law when the taking is for a use that will promote the public interest, and which use tends to develop the great natural resources of the commonwealth. After a careful examination of the leading cases on this subject we are of the opinion that the class of opinions last mentioned are more in harmony with enlightened public policy and the liberal interpretation given the term public use, which the Legislature has in effect declared shall be followed in this State, is far more conducive to individual and public advancement than the restricted construction adopted and followed by the line of decisions first referred to.

WATER QUESTION VITAL.

"The question of the manner of appropriation and use of water for domestic, irrigation, mining and manufacturing purposes is, and ever since the advent of the early pioneers, has been the most important and vital of all industrial questions with which the people within this arid region have been confronted. Their requirements, and we might add, their absolute necessities, impelled the Legislatures and courts at an early date in the history of the States and Territories strictly arid in character, to depart from and lay aside as impracticable, some legal doctrines and rules relating to the control and use of water which had theretofore been adhered to and followed for ages, and to adopt and put in operation a new system of acquiring title in and to the streams which are within the arid belt, the use of which was found to be indispensable in agricultural pursuits, in mining, in the establishment of industries, and in the general development of the arid States and Territories."

THE CONCLUSIONS REACHED.

The opinion goes on to state that the question of how to increase the water supply in the arid region has grown in magnitude and importance until it has become national as well as local, and that Congress granted to this State 550,000 acres of the public lands with which to create a fund to be used for the purpose of building reservoirs, and that in the act known as the Irrigation Bill created a fund, which is available to the millions of dollars for the purpose of aiding in this most important of all enterprises of a public character in the West.

A large number of decisions are quoted in support of the points made, and the judgment of the lower court is affirmed, with the costs taxed to the appellants.

MRS. NASH TALKS BACK.

Files an Answer to Charges Made by Her Husband.

In the separate maintenance suit brought by Sarah C. Nash against Albert H. Nash the plaintiff yesterday filed an answer to the counter-claim of the defendant for divorce, in which she denies that she has at any time deserted the defendant or treated him with extreme cruelty. Mrs. Nash alleges that in October, 1899 her husband, without her consent and without cause, left her home and society for a period of about nine or ten months, but afterward returned and requested her to receive him back. She says he begged her to take him back as her husband and that she did so without condition.

The plaintiff further alleges that in July, 1901, while she was sick in bed, the defendant took his personal effects and left the lodging house, which she

was keeping and where they were both living, and went to a hotel and lived apart from her for about three months; that he came back again and asked to live with her, and that she again took him into her society and home.

The defendant is alleged to have deserted her again in July, 1902, and to have remained apart from her from that time to the present. Mrs. Nash alleges that during the entire sixteen years of their married life that the defendant has not spent over the sum of \$250 for her clothing and wearing apparel, and has paid less than three years of rents during this period. She says that during all of this time she has furnished most of the living for them both.

She denies that in September, 1899 she assaulted the defendant and struck him over the head with a piece of firewood, and denies that she ever inflicted wounds upon him that have left scars to this day. The plaintiff admits that in October, 1902, while the defendant was a candidate for the State Legislature, that she caused to be published in the daily papers certain matters about her husband, and says that the statements made were not false, but were true. She denies that she has the counter-claim dismissed and that she has the relief prayed for.

Suit to Quiet Title.

The appeal in the case of the Dry Creek Reservoir and Irrigation company et al., appellants, vs. the Draper Irrigation company has been dismissed by the Supreme court. The plaintiff in the suit brought suit to quiet title to eleven-twelfths of the flow of the water of North Dry creek, prior to July 20th of each year. At the trial of the case each party claimed the right to the use of one-half of the flow of the stream during all seasons of the year. From this decision the plaintiffs appealed to the Supreme court. The defendant moved to have the appeal dismissed, which was done.

Court Notes.

Judgment in favor of the defendant was rendered in the District court yesterday by Judge Lewis in the case of Ida W. Frye against R. G. Richville. District Judge Lewis yesterday rendered judgment in favor of the plaintiff in the case of Eliza Wells vs. George Goss et al. The action is one in which the plaintiff sought to recover on a promissory note.

In the case of Dr. J. C. E. King vs. Frank Morrison, Judge Lewis yesterday rendered judgment in favor of the defendant for \$93.60 for the use and benefit of plaintiff against the San Pedro, Los Angeles and Salt Lake Railroad company, garnishee.

The Western Loan and Savings company brought a foreclosure suit in the District court yesterday against Alexander and Nellie Maginness to secure judgment on a promissory note for \$1500.00, alleged to have been executed by the defendants on December 18, 1902.

The petition of the respondent for a rehearing in the case of the Orient Mining company vs. W. W. Freckleton, appellant, has been denied by the Supreme court. The action was brought over the ownership to a spring of water in Juab county. Judge Hall decided in favor of the plaintiff and the decision was affirmed by the Supreme court on the appeal.

The American Bonding Company of Baltimore filed a complaint in the District court yesterday against John Cooke to recover judgment in the total sum of \$256.50 with interest alleged to be due on damages sustained through the negligence of the defendant, who had been bonded by the plaintiff for the faithful performance of certain contracts. The plaintiff further asks for \$500 attorneys' fees.

OGDEN AND RETURN \$1.00.

Woodmen of the World Excursion.

Special train leaves the Rio Grande depot 7:30 p. m., Jan. 27th. Returning leaves Ogden after the bull. Everybody invited.

"Grand Old Man" of British Navy.

London, Jan. 23.—Sir Henry Keppel, who has just died at the age of 90, long enjoyed the distinction of being the "grand old man" of the British navy. By special order in council he was maintained on the active list as a special mark of honor, while he had held the highest rank of Admiral of the Fleet since 1877.

REFUSE SUBSTITUTES

They are injurious and do not cure. Insist on getting the genuine—Dr. Bull's Cough Syrup—THE ONE THAT HAS STOOD THE TEST FOR FIFTY YEARS. See that the "Bull's Head" is on the package.

DOCTORS PRESCRIBE IT

Dr. P. A. Schott, St. W. 101st Street, New York City, writes: "Dr. Bull's Cough Syrup is used with great satisfaction by my patients. I frequently prescribe it and am fully repaid for so doing."

COUGH CURED

Croup attacks a child without warning and needs very prompt attention or it may prove serious, even fatal. If you have any symptoms of croup, give baby a small dose of Dr. Bull's Cough Syrup. It will relieve instantly and cure in a night.

"My three children were sick with the croup and a severe, hard cough. After having given the children half a bottle of Dr. Bull's Cough Syrup they were well, and I therefore can recommend it as the best cough and croup remedy I have ever used." Mrs. Cora Williams, Weston, Ind.

DR. BULL'S COUGH SYRUP

will relieve croup instantly and cure it in a night. No danger from choking after you have given baby one or two doses. Every mother should keep a bottle of Dr. Bull's Cough Syrup in the house to be prepared for sudden attacks of croup.

Cures Coughs and Colds

There is no case of throat or lung trouble which Dr. Bull's Cough Syrup will not cure. It is today the only absolutely sure and safe cure for cough, cold, hoarseness, bronchitis, influenza, croup, whooping cough, bleeding lungs or hemorrhages and consumption. It contains no harmful drugs.

Small Dose. Pleasant To Take.

The accompanying illustration is a facsimile of the genuine package. Sold at all drug stores, 25c, 50c, and \$1.00. Be sure that the package has the trade-mark, a "Bull's Head." Dr. Bull's Cough Syrup will cure speedily and will leave the throat and lungs in a healthy and normal condition.

AS PREPARED BY THE
Rev. Dr. J. W. Bull,
Baltimore, Md.
For Sale by all Druggists.
Price 25 Cents.
(Directions inside.)

THE FOREST RESERVES

Points of Difference With Governor Wells Stated.

Editor Tribune:—The letter which Gov. Wells wrote, and which was recently read before the Live-Stock convention in Portland, is of such vast importance to the people of the State of Utah that I deem it my duty as a citizen and taxpayer of this State, having the welfare of the State at heart, to make some timely criticisms thereon. Gov. Wells seems to forget that as Governor of the State he represents the entire people and not a particular class. If he had written the letter in his individual capacity probably no fault could have been found with it, because as an individual he is entitled to his opinions, but he oversteps the bounds of propriety when he attempts, in his official capacity, to make representations concerning a particular section of a State which he is chosen to represent without consulting the people of that section and obtaining their views on the matter. Had he been employed by the Wool-Growers association of Utah as a legal attorney to represent them he could not have made a more forceful argument in their behalf than he did in the said letter. The Governor tries to promulgate the idea that the Wasatch and Manti forest reserves were created merely for the purpose of protecting the homes and the water rights of the people in the vicinity of those reserves. Fully 75 per cent of the population adjacent to the Manti forest reserve signed the petition to the Federal Government requesting its creation. Certainly those petitioners knew what they wanted or they would not have signed the petition. They were not arboriculturists, botanists, or dreamers. They desired the preservation of the watershed which they knew would not long be water-shed if by the constant tramping down of growing vegetation they would be denuded of young and growing trees. Without water their lands would become practically valueless. Water could only be obtained from snow which would fall in the mountains, and which could only be held in place, for use during the summer season, by the undergrowth and vegetation of the mountains. It is true that very commendable to perpetuate and encourage homesteading, but it is not better to protect and encourage the homes and homesteads we now have than to finally make uninhabitable and unprofitable not only the new homes that might be established, but also those that have long since been established. It is a well-known fact that the lands that have been withdrawn from settlement and placed into forest reserves were not suitable for homesteading or else they would have long since been taken up for that purpose. The Governor evidently does not seem to be so much an advocate of the rights of the homesteader as he is jealous of having ceded lands to the State under which he grants the most saleable lands. If this State should take up these watershed lands and sell them to individuals the result would be endless litigation. For the owners of such lands as produce streams and springs would be continually diverting water rising on their property for their own use. They would no doubt make a few reservoirs, develop some springs and claim they were creating and turning back to the appropriators as much water as they had diverted. It is a well-known fact that we have no measurements of these many sources of water supply, the fact being that the seasons are so much at variance that one could not know the causes of increase or decrease in the water course to law would not only be expensive, but endless. If the Government can cede to the State these lands, then it certainly should have the power, and it should be its duty, to cede to the farming areas the watershed upon which these farming areas are dependent.

CAUSE OF IRRIGATION.

Again I take issue with the Governor as to the cause of migration from our

State. Every one knows that such migration is not caused by the creation of forest reserves, as he infers. These forest reserves are a recent establishment and yet the migration began some years prior to the establishment of the forest reserves. The Governor, as a student of the economic conditions of the State, must know that the constant denuding of the mountains by the ravages of sheep was curtailing our water supply to such an extent that additional homesteading and land cultivation were rendered absolutely unavailing by reason of the fact that there was not water enough to irrigate the lands. Tillers of the soil and young homesteaders being aware of this condition of affairs, and not desiring to take any chances of shortage of water when it was most needed, concluded that they would not take chances in a country where the sheep interests were constantly encroaching upon the watersheds, and fearing that if that policy continued for a few years longer they would not be water enough for the old settlers, much less the new, they determined to seek new fields where the supply of water was not subject to the rapacity and greed of wool-growers.

The farmers of Sanpete and Sevier counties agree with President Roosevelt's remarks made in the Tabernacle last May, when he stated that the rights of future generations to the products of these lands should be conserved, and that only by protecting the watersheds, which give life and vigor to these lands, can the interests of future owners be safe-guarded and protected. The policy of the Federal Government in this regard is more to be commended than the short-sighted policy of an official who is merely looking for present results, and not to the interests of a people who will be on earth long after he shall have been dead and forgotten. The President, under the law of Congress, can create forest reserves, he cannot enter watershed reserves. The greater need of Utah is not land but water, and to advocate a policy which will eventually minimize the supply by cutting off the source of supply, would not only be foolish but detrimental to one of the material interests of the State.

HENRY ROBBINS.
Gunnison, Jan. 17, 1904.

DEATH OF HENRY SIEGEL.

Well-Known Salt Lake Merchant Dies From Bright's Disease in New York.

The news of the death of Henry Siegel, president of the Siegel Clothing club of this city, who died suddenly in New York city last Friday night, was received here yesterday morning by his brother, Sol Siegel, vice-president of the clothing company. The deceased was 62 years old. The message contained no details, but it is well known to Mr. Siegel's friends that he went to New York last December for Bright's disease treatment, from which affliction he has been a constant sufferer. News was received just a few days ago that he was much improved, and the announcement of his death therefore came as a great surprise. Mr. Siegel has made his home in this city for a number of years, although his family has continued to reside in New York. The interment will probably take place in that city.

For Over Fifty Years.

An old and well-tried remedy. Mrs. Winslow's Soothing Syrup has been used for over fifty years by millions of mothers for their children while teething, with perfect success. It soothes the child, softens the gums, allays all pain, cures wind colic and is the best remedy for diarrhoea. Sold by druggists in every part of the world. Be sure and ask for Mrs. Winslow's Soothing Syrup.

We have moved to No. 12 West Third South. Will be glad to meet our old friends and customers in our new location. On account of cheap rent we will be able to give our patrons the benefit of same, and will sell good goods cheaper than ever.

TOM & JERRY CLOTHING HOUSE,
12 N. Lewis, Prop.

BOOKS FOR THE LIBRARY.

The following thirty-two volumes will be added to the public library Monday morning, January 26, 1904.

MISCELLANEOUS.

Clement—Handbook of Modern Japan. Davitt—Within the Pale. Ennis—Music in Art. Higgins—Tales of California and Back. Hudson—Naturalist in La Plata. Lafarge—Great Masters. Levy-Bruhl—Philosophy of Comte. Litchfield—Illustrated History of Furniture. Marden—Young Man Entering Business. McCarthy—Ireland and Her Story. Palmer—Austro-Hungarian Life in Town and Country. Myers—Human Personality (2 vols.). Richards—Dre Dressing (2 vols.). Smith—Arnold's March from Cambridge to Quebec. Thwaites—Hennepin's "A New Discovery" (2 vols.). Villari—Italian Life in Town and Country. Wilson—Irrigation Engineering.

FICTION.

Becke—Helen Adair. Benson—Book of Months. Brady—Sir Henry Morgan, Buccaneer. Dickson—She That Heatsates. Ford—Brazen Cal. Gaines—Gorgo. Galsworthy—The Patience. Munn—Fath of Stars. Ransome—Molly and the Lawless Man. Douglas—Little Girl in Old St. Louis. Pyle—King Arthur and His Knights. Tappan—In the Days of Queen Victoria.

VERY DELICATE OPERATION.

Mrs. John Menzies Recovering Nicely After Passing Through a Rare Experience.

The many friends of Mrs. John Menzies, who was taken to Holy Cross hospital on January 12th, to be operated upon for stomach trouble, will be pleased to learn the operation was successful, that she is now considered to be out of danger, and her speedy recovery is looked for. The operation, performed by Dr. Root, assisted by Dr. Mayo, and involving as it did two openings in the exterior surface, the entire removal of the stomach, which was found out of place and in folds, the straightening out and setting it back in its natural position, through one of the openings, and the removal of unlooked for troubles through the other, was a skillful piece of surgery.

Salt Lake Business College, 70 North Main Street.

Chance for school graduates. New classes organized this week in book-keeping, shorthand, typewriting and telegraphy. New classes next week in English branches, mathematics, law, office work, etc. Positions secured for graduates. Write for circulars.

WOODMEN EXCURSION

To Ogden, Jan. 17th.

Special train leaves D. & R. G. depot at 7:30 p. m. Returning leaves Ogden after the bull. Fare \$1.00 for the round trip. Everybody invited.

Elk Horn Whiskey—Nine Years Old.

For \$2.40 we ship in plain boxes to any point on the railroad in Utah, Idaho and Wyoming, express prepaid, four full quarts of the above well-known brand, a fine old mellow whiskey, guaranteed to give satisfaction. Remit either by money order or bank exchange. For reference, any express company or National Bank of the Republic. C. H. REILLY, Elk Horn Whiskey Co., Cor. State and 1st St. S. Salt Lake City, Utah.

Be Wise And buy a piano at less than factory cost at Carlsen & Anson Co., 14 Main St. Old stand Daynes Music Co.

Vienna Model Bakery and Cafe.

FREE DELIVERY TO ALL PARTS OF THE CITY. Phone or call and leave your orders for the best BREAD AND CAKES.

THE GREAT SALE

Hundreds of Salt Lake men have taken advantage of the great price reductions we have been making. The opportunity is open to you this week. Splendid selections in CLOTHING and FURNISHINGS for your choosing.

In Suits, sizes 33, 34 and 35 selections are especially good, and fairly good in all sizes up to size 46.

We continue the sale as before. The following great Price Reductions on

SUITS AND OVERCOATS

Values \$12.50 to \$15.00, choice	\$7.50
Values \$18.00 to \$20.00, choice	\$11.00
Values \$22.50 to \$25.00, choice	\$15.00
Values \$30 and \$35.00, choice	\$19.75

MEN'S PAJAMAS

\$3.00 values at \$2.25	\$5.00 values at \$3.75
\$4.00 values at \$2.75	\$6.00 values at \$4.50

MEN'S UNDERWEAR

AT ONE-THIRD OFF REGULAR PRICE.

MEN'S SWEATERS

\$3.00 values at \$2.00
\$4.00 values at \$2.75
\$5.00 values at \$3.75

About 10 dozen Hats, odd lots, worth \$3.00 to \$4.00, choice \$1.00.

Boys' Caps at your own price.

Come today, buy, save money. This is the store to get dependable merchandise.

GRAY BROS. & CO.

154 MAIN STREET

Bedridden 10 Months with Kidney Disease.

Mr. C. B. Righter, of Wilmington, Del., 70 Years of Age, Given Up to Die of Kidney Trouble, Says He Was Completely Cured by Warner's Safe Cure

"I am now 70 years old and in perfect physical condition, all of which I owe to your grand medicine, and I want to tell you about my case. I was taken ill in March, 1904, and the doctor told me I had a serious case of kidney disease. He treated me seven months, but I kept getting worse until I took to my bed. I was bedridden for about one month and was reduced to a mere skeleton. I was advised to prepare for death at any minute. Friends told me the Safe Cure had cured them, and urged me to try it, so I stopped the doctor's medicines and took nothing but Safe Cure. I began to improve within a few days, and nine bottles restored me to perfect health and strength, and I have not had a touch of kidney trouble since." CHAS. B. RIGHTER.

Warner's Safe Cure

"We have thousands of just such letters from men and women who have been cured of kidney disease by Safe Cure. Thousands of leading doctors and hospitals have been using Safe Cure for years as the only positive cure for all diseases of kidneys, bladder, liver and blood—the one remedy that cures and leaves no bad after effects."

Sold by druggists, or direct, 50 cents a bottle. Be sure you get WARNER'S SAFE CURE—there are dangerous imitations. Medical booklet with testimonials and doctors' advice free for writing Warner's Safe Cure Co., Rochester, N. Y.

SAFE PILLS move the bowels gently and aid a speedy cure.

HAVE YOU SEEN THEM?

The Ivers & Pond Pianos. Full stock of 1904 styles, superb in tone, qualities and finish. Agents for the CHASE & BAKER PIANO PLAYER.

FREE

Delivery to all parts of the city. Phone or call and leave your orders for the best BREAD AND CAKES.

Vienna Model Bakery and Cafe.

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Values \$22.50 to \$25.00, choice	\$15.00
Values \$30 and \$35.00, choice	\$19.75

MEN'S PAJAMAS

\$3.00 values at \$2.25	\$5.00 values at \$3.75
\$4.00 values at \$2.75	\$6.00 values at \$4.50

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AT ONE-THIRD OFF REGULAR PRICE.

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\$5.00 values at \$3.75

About 10 dozen Hats, odd lots, worth \$3.00 to \$4.00, choice \$1.00.

Boys' Caps at your own price.

Come today, buy, save money. This is the store to get dependable merchandise.

GRAY BROS. & CO.

154 MAIN STREET

ANTI-RUST—NON-RUST CAN'T RUST

TINWARE SALE

Every piece warranted to RUST. A special offer. See our west window. These goods.

BRUBAKER-CAMPBELL HARDWARE COMPANY

27-29 West Third South

Phone 1637-K

Quality

Is the watchword of the grocery business. Prices are constant, the values that we give. Our prompt delivery service will help you have your meals on time.

T. E. Harper

GOOD THINGS TO EAT. 85 EAST SECOND SOUTH. Telephone 54.

The State Bank of Utah

Corner Main and South Temple Salt Lake City.

JOSEPH F. SMITH, President. WILLIAM B. PRESTON, Vice-President. CHARLES R. BURTON, Cashier. HENRY T. MEWAN, Asst. Cashier.

GENERAL BANKING BUSINESS. Accounts Solicited. Special attention country trade. Correspondence invited.

COMMERCIAL NATIONAL BANK. CAPITAL PAID IN, \$200,000.

General banking in all its branches. Directors: J. B. Cragg, John I. O. J. Sallsbury, Moylan C. Cosgriff, W. P. Noble, George M. John W. Donnellan, A. F. Holden.

WELLS, FARGO & CO. BANK. Salt Lake City, Utah.

The Oldest and Strongest Bank in the West. Capital \$1,000,000. Surplus \$1,000,000. Undivided Profits \$1,000,000.

Transacts a general banking business domestic and foreign. Direct connections with banks in principal cities of the world.

ISSUES: Drafts, Letters of Credit, Telegraphic Transfers, Deposits received—subject to check. H. L. MILLER, Cashier. H. P. CLARK, Asst. Cashier.

ESTABLISHED 1841. THE OLDEST AND LARGEST.

R. G. DUN & CO.,

The Mercantile Agency

GEORGE RUST, General Manager. Utah, Idaho and Nevada. Office in Progress Bldg., Salt Lake City.

CAPITAL FULLY PAID, \$200,000.

WALKER BROTHERS Bankers.

SALT LAKE CITY, UTAH. Established 1883. General Bankers. SAFE DEPOSIT BOXES FOR RENT.

DESERT NATIONAL BANK. UNITED STATES DEPOSITARY. Salt Lake City, Utah.

Capital, \$500,000. Surplus, \$200,000.

L. S. HILLS, President. MOSES THATCHER, Vice-President. H. S. YOUNG, Cashier. E. S. HILL, Asst. Cashier. Safe deposit boxes for rent.

NATIONAL BANK OF THE REPUBLIC. U. S. DEPOSITARY.

FRANK KNOX, President. JAMES MURRAY, Vice-President. W. F. ADAMS, Cashier. CAPITAL PAID IN, \$200,000.

Banking in all its branches. Exchange drawn on the principal cities of Europe. INTEREST PAID ON TIME DEPOSITS.

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Salt Lake City, Utah. ESTABLISHED 1872.

UNION ASSAY OFFICE, M. S. HANAUER, Manager.